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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

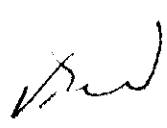
PAMELA BRENNAN, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

CONCORD EFS, INC., *et al.*,

Defendants.

Case No. C-04-2676 (VRW) 

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation is warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards

1 that will be applied when a party seeks permission from the court to file material under seal.

2 2. DEFINITIONS

3 2.1 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and outside counsel (and their support staff).

5 2.2 Disclosure or Discovery Material: all items or information, regardless of
6 the medium or manner generated, stored, or maintained (including, among other things,
7 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
8 responses to discovery in this matter.

9 2.3 Confidential Information or Items: information (regardless of how
10 generated, stored or maintained) or tangible things that qualify for protection under standards
11 developed under F.R.Civ.P. 26(c).

12 2.4 Highly Confidential – Outside Counsel Eyes Only Information or Items:
13 any information or material produced or disclosed in this Litigation that is of a highly
14 competitively sensitive nature to such Party including, but not limited to, information contained in
15 strategic and marketing plans, marketing efforts, licensing or other contractual terms and royalty
16 rates and payment amounts, the disclosure of which to another Party or nonparty would create a
17 substantial risk of serious injury to that party that could not be avoided by less restrictive means.

18 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 2.6 Producing Party: a Party or non-party that produces Disclosure or
21 Discovery Material in this action.

22 2.7 Designating Party: a Party or non-party that designates information or
23 items that it produces in disclosures or in responses to discovery as Confidential or Highly
24 Confidential” Outside Counsel Eyes Only.

25 2.8 Protected Material: any Disclosure or Discovery Material that is
26 designated as Confidential or as Highly Confidential – Outside Counsel Eyes Only.

27 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
28 retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or non-party that designates information, materials or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those

1 parts of material, documents, items, or oral or written communications that qualify so that other
 2 portions of the material, documents, items, or communications for which protection is not
 3 warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 5 are shown to be clearly unjustified, or to have been made for an improper purpose (*e.g.*, to
 6 unnecessarily encumber or retard the case development process, or to impose unnecessary
 7 expenses and burdens on other parties), may expose the Designating Party to sanctions. If it
 8 comes to a Party's or a non-party's attention that information or items that it designated for
 9 protection do not qualify for protection at all, or do not qualify for the level of protection initially
 10 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
 11 original designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 13 Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
 14 material that qualifies for protection under this Order must be clearly so designated before the
 15 material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of
 18 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
 19 CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY at the
 20 top of each page that contains protected material.

21 A Party or non-party that makes original documents or materials available for
 22 inspection need not designate them for protection until after the inspecting Party has indicated
 23 which material it would like copied and produced. During the inspection and before the
 24 designation, all of the material made available for inspection shall be deemed "HIGHLY
 25 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY." After the inspecting Party has
 26 identified the documents it wants copied and produced, the Producing Party must determine
 27 which documents, or portions thereof, qualify for protection under this Order, then, before
 28 producing the specified documents, the Producing Party must affix the appropriate legend

1 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”)
2 at the top of each page that contains Protected Material.

3 (b) Any Party may designate, or counterdesignate with a higher
4 designation, Information produced by any party and/or non-party that contains or is derived from
5 that Party’s own protected material. Each Party that designates or counterdesignates Information
6 will be treated as the Designating Party for purposes of this Order.

7 (c) for testimony given in deposition or in other pretrial or trial
8 proceedings, a Party or non-party may identify on the record before close of the deposition,
9 hearing, or other proceeding, all protected testimony, and further specify any portions of the
10 testimony that qualify as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE
11 COUNSEL EYES ONLY.” In the alternative, a Party or non-party may also designate the
12 transcript (or any portion thereof) as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 OUTSIDE COUNSEL EYES ONLY” within fifteen (15) calendar days after counsel has received
14 the transcript. All information disclosed during the testimony shall be deemed “HIGHLY
15 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” until the expiration of that fifteen (15)
16 day period, whether or not any portion of the transcript has been so designated previously.

17 Transcript pages containing Protected Material must be separately bound by the
18 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL –OUTSIDE COUNSEL EYES ONLY,” as instructed by the Party
20 or nonparty offering or sponsoring the witness or presenting the testimony.

21 (d) for information produced in some form other than documentary,
22 and for any other tangible items, that the Producing Party affix in a prominent place on the
23 exterior of the container or containers in which the information or item is stored the legend
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.”

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
26 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” does not, standing alone, waive the
28 Designating Party’s right to secure protection under this Order for such material. If material is

1 appropriately designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE
2 COUNSEL EYES ONLY" after the material was initially produced, the Receiving Party, on
3 notification of the designation, must make reasonable efforts to assure that the material is treated
4 in accordance with the provisions of this Order. In that event, the Designating Party shall
5 promptly produce new copies of the material at issue, with the proper designation. Upon
6 receiving those copies, the Receiving Party shall promptly discard any copies that do not include
7 the proper designation.

8 5.4 Inadvertent Production of Privileged Materials. If a party inadvertently
9 produces information that it later discovers, or in good faith later asserts, to be privileged or
10 otherwise protected from disclosure, the production of that information will not be presumed to
11 constitute a waiver of any applicable privileges or other protection. In these circumstances, the
12 producing Party must immediately notify all parties in writing of the inadvertent production and
13 the basis for the privilege or other protection from production, and request in writing the return or
14 confirmed destruction of the privileged or protected information. Within five days of receiving
15 such notification, and in compliance with the Receiving Parties' ethical obligations under the law,
16 all Receiving Parties who have not already reviewed such materials or who have reviewed the
17 materials but do not contest the applicability of the privilege asserted must return or confirm
18 destruction of all such materials, including copies and/or summaries thereof. However, should a
19 Receiving Party contest the applicability of a privilege asserted with respect to an inadvertently
20 produced document which the Receiving Party has already reviewed, the Receiving Party may
21 temporarily retain the document or documents at issue for the sole purpose of contesting the
22 applicability of the privilege asserted. Within two (2) business days of the issuance of a court
23 order deeming the contested documents at issue privileged, however, the Receiving Party must
24 return or confirm destruction of all such materials, including copies and/or summaries thereof.

25 5.5 Preliminary Designation of Documents Produced By Third Parties. In
26 order to provide the parties an adequate opportunity to designate Discovery Materials as
27 "Confidential" or "Highly Confidential – Outside Counsel Eyes Only," all Discovery Materials
28 produced in this case by third parties shall be deemed "Highly Confidential – Outside Counsel

Eyes Only,” whether or not stamped with that legend, for a period of fifteen (15) days following production. Furthermore, the inadvertent failure by any party to designate Discovery Materials produced by third parties as “Confidential” or “Highly Confidential – Outside Counsel Eyes Only” within that fifteen (15) day period shall not waive a party’s right to later so designate such Discovery Materials with prospective effect, so long as the designation correction is made in a timely fashion, consistent with Paragraph 5.3 of this Order. If Discovery Materials claimed to be “Confidential” or “Highly Confidential – Outside Counsel Eyes Only” are produced without that designation by a third party, such Discovery Materials and all copies thereof shall be immediately stamped “Confidential” or “Highly Confidential – Outside Counsel Eyes Only,” as requested by the Designating Party. The Receiving Party may challenge the designation of the documents as provided in this Order, but the inadvertent production of Discovery Materials (including, without limitation, testimony) claimed to be “Confidential” or “Highly Confidential – Outside Counsel Eyes Only” without that designation shall not constitute a waiver of confidentiality.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION). Nothing in this Order affects the right of the party or nonparty that produced Discovery Materials to use or disclose such Discovery Materials, or the contents thereof, in any way. Such use or disclosure will not waive the protections of this Order, and shall not entitle any other party, nonparty or their attorneys to use or disclose such Discovery Materials, or the contents thereof, in violation of this Order.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. Persons receiving Protected materials must not reveal or discuss that information to or with any person who is not entitled to receive the Protected Material, except as set forth in this Order.

1 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
2 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party's Outside Counsel of record in this action, as
5 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
6 for this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of
8 the Receiving Party to whom disclosure is reasonably necessary for this litigation only if he or
9 she has agreed in writing by executing the Confidentiality Agreement attached hereto as
10 Appendix A;

11 (c) experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation only if he or she has agreed in writing by
13 executing the Confidentiality Agreement attached hereto as Appendix A, or on the record during
14 a deposition, to be bound by this Protective Order. Notwithstanding any provision within this
15 Protective Order, all parties may disclose to their experts information originally within their
16 possession, custody and/or control even if other parties have produced similar information in this
17 litigation and have designated such information "CONFIDENTIAL" or "HIGHLY
18 CONFIDENTIAL -- OUTSIDE COUNSEL EYES ONLY."

19 (d) the Court and its personnel;

20 (e) court reporters, their staffs, and professional vendors to whom
21 disclosure is reasonably necessary for this litigation;

22 (f) during their depositions, witnesses in the action to whom disclosure
23 is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
24 (Appendix A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 Protected Material must be separately bound by the court reporter and may not be disclosed to
26 anyone except as permitted under this Stipulated Protective Order.

27 (g) the author of the document or the original source of the
28 information.

(h) any person who received or was sent the document in the ordinary course of business.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) to whom disclosure is reasonably necessary for this litigation only if he or she has agreed in writing by executing the Confidentiality Agreement attached hereto as Appendix A, or on the record during a deposition, to be bound by this Protective Order. Notwithstanding any provision within this Protective Order, all parties may disclose to their experts information originally within their possession, custody and/or control even if other parties have produced similar information in this litigation and have designated such information "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY";

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation; and

(e) the author of the document or the original source of the information.

(f) any person who received or was sent the document in the ordinary course of business.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,”
 2 the Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
 3 immediately and in no event more than three court days after receiving the subpoena or order.
 4 Such notification must include a copy of the subpoena or court order.

5 The Receiving Party also must immediately inform in writing the Party who
 6 caused the subpoena or order to issue in the other litigation that some or all the material covered
 7 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
 8 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
 9 that caused the subpoena or order to issue.

10 The purpose of imposing these duties is to alert the interested parties to the
 11 existence of this Protective Order and to afford the Designating Party in this case an opportunity
 12 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
 13 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
 14 of its confidential material – and nothing in these provisions should be construed as authorizing or
 15 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

16 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 18 Protected Material to any person or in any circumstance not authorized under this Stipulated
 19 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
 20 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected
 21 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
 22 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
 23 Agreement to Be Bound” that is attached hereto as Appendix A.

24 10. FILING PROTECTED MATERIAL

25 Without written permission from the Designating Party or a court order secured
 26 after appropriate notice to all interested persons, a Party may not file in the public record in this
 27 action any Protected Material. A Party that seeks to file under seal any Protected Material must
 28 comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future, nor does the Order prevent any party from seeking additional or different protections from the Court with respect to Discovery Materials in this case.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 August 1
3 Dated: July, 2005

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Respectfully submitted,

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IT IS SO ORDERED.

Date: 4 AUG 2005

Vaughn R. Walker
Judge Vaughn R. Walker

APPENDIX A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have read
 in its entirety and understand the Stipulated Protective Order that was issued by the United States
 District Court for the Northern District of California on _____ in the case of *Brennan et al. V.
 Concord EFS, Inc., et al.*, Case No. C-04-2676 (VRW). I agree to comply with and to be bound
 by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure
 to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
 of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]